

## **CIVIL SERVICE COMMISSION MINUTES**

**April 5, 2000**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Mary Gwen Brummitt  
Gloria Valencia-Cothran  
Gordon Austin

Comprising a quorum of the Commission

Absent were:

Sigrid Pate  
Roy Dixon

Support Staff Present:

Larry Cook, Executive Officer  
Ralph Shadwell, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES  
April 5, 2000

1:30 p.m.      CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m.      OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
3,4,6,7,8,9,10	6		5

COMMENTS Motion by Austin to approve all items not held for discussion; seconded by Brummitt. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda**

A. Commissioner Austin: Everett Bobbitt, Esq., on behalf of **Edward Cervantes**, District Attorney Investigator, Office of the District Attorney, appealing an Order of Termination and Charges from the Office of the District Attorney.

**REGULAR AGENDA**  
**County Administration Center, Room 358**

NOTE: Five total minutes will be allocated for input on Agenda Items unless additional time is requested at the outset and it is approved by the President of the Commission.

**MINUTES**

1. Approval of the Minutes of the regular meeting of March 15, 2000.

**Approved.**

**CONFIRMATION OF ASSIGNMENTS**

2. Commissioner Pate: **Federico Gallardo**, Pharmacy Technician, Health and Human Services Agency, appealing an Order of Suspension from the Health and Human Services Agency.

**Confirmed.**

3. Everett Bobbitt, Esq. on behalf of Deputy Sheriff **Beverly Cullen** appealing an Order of Suspension and Reassignment by the Sheriff's Department.

RECOMMENDATION: Deny Request.

Commission staff recommended denial due to the untimeliness of the appeal. Everett Bobbitt, Esq. on behalf of Appellant, explained to the Commission that the late filing of Ms. Cullen's appeal was due to misunderstanding and lack of knowledge regarding the Civil Service system. He explained that Appellant was informed by a Department Captain at the January, 2000 Skelly hearing that the suspension was not upheld, and that she was merely transferred. Believing that to be accurate, Appellant did not read the disciplinary package that was served on her by a Sergeant from Internal Affairs on February 14, 2000, who also told her at that time that the suspension had been dropped. A higher ranking officer had, however, reinstated the suspension, and the disciplinary package did contain the Order of Suspension and Reassignment with standard language setting forth Appellant's appeal rights. Appellant did not read the disciplinary package because she was under the impression that the suspension had been dropped. Appellant first became aware of the reinstated suspension when she was contacted by her Lieutenant who was given notice by payroll to commence the 5 days without pay. Realizing she had been misinformed, Appellant obtained counsel and filed an appeal with the CSC. The Sheriff's Department furnished written input to this matter, but was not present at the Commission meeting to provide verbal input.

**Motion by Austin to grant a hearing; seconded by Brummitt.  
Carried. Commissioner Valencia-Cothran assigned as hearing officer.**

## **DISCIPLINES**

### **Findings**

4. Commissioner Austin: Everett Bobbitt, Esq., on behalf of **Edward Cervantes**, District Attorney Investigator, Office of the District Attorney, appealing an Order of Termination and Charges from the Office of the District Attorney.

### **FINDINGS & RECOMMENDATIONS:**

Employee was charged with Cause I - Conduct unbecoming a peace officer (failure to maintain secure supervision of a prisoner); Cause II - Dishonesty; Cause III - Failure of good behavior; Cause IV - Acts that are incompatible with or inimical to the public service; and Cause V - Negligence resulting in harm or significant risk of harm to the public or the public service. Employee was an Investigator III for the Office of the District Attorney for approximately 12 years. Employee is charged with allowing unapproved and undisclosed benefits to be

received by an incarcerated criminal informant which, upon subsequent discovery, resulted in the reversal of the convictions of four defendants in a police officer murder trial. These benefits consisted of allowing the criminal informant freedom from adequate supervision and restraint, which provided him with the opportunity to engage in sexual conduct with female visitors, including taking nude photographs and performing sexual acts.

The evidence presented at the Commission hearing clearly demonstrated that Employee was negligent in failing to maintain visual contact with, and restraint of, prisoner while he was in Employee's custody. Thirteen photographs of the prisoner with a female, mostly taken in and around the District Attorney offices were entered into evidence. Most of the photos involved nudity and were sexually suggestive. Additionally, there was testimony from four females who visited prisoner at various times while in the custody of Employee. Employee steadfastly maintained, both prior to the Commission hearing and at the Commission hearing, that the prisoner did not engage in sexual activity with female visitors, nor did prisoner have the opportunity to engage in such activity while in Employee's custody.

The testimony at the hearing demonstrated that investigators are expected to maintain visual contact with prisoners in their custody at all times. However, on a least one occasion, Employee was discovered in a separate room from the prisoner and his female visitor. The hearing officer found that Employee's failure to maintain visual contact at all times while the prisoner was in his custody created opportunities for the prisoner to engage in nude photography and sexual acts, creating a situation whereby the prisoner had access to objects which could have been used as weapons, as well as giving the prisoner (a convicted, violent felon) the opportunity to escape.

The hearing officer concluded that Employee was dishonest when he repeatedly maintained that he neither allowed nor provided the opportunity for the prisoner to engage in nude photography and sexual activity. It is concluded that Employee is guilty of Causes I, II, III, IV, and V. It is therefore recommended that the Order of Termination and Charges be affirmed; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Austin to approve Findings and Recommendations;  
seconded by Valencia-Cothran. Carried.**

## **SELECTION PROCESS**

### **Complaints**

5. Wendell Prude in place of Dung Tran, S.E.I.U. Local 2028, on behalf of **Valerie Pickett** requesting a Rule X hearing regarding her not being appointed to the classification of Eligibility Technician in the Health and Human Services Agency.

RECOMMENDATION: Deny Request. (Continued from the Commission's February 16, 2000 and March 15, 2000 meetings.)

**Withdrawn.**

6. **Adell Burge**, S.E.I.U. Local 2028 Steward, on behalf of **John McPherson**, **Frances Quemado** and herself, employees of the Department of the Public Defender, appealing the selection process for the classification of Legal Procedures Clerk II by the Departments of Human Resources and the Public Defender.

RECOMMENDATION: Deny Request.

Adell Burge, on behalf of Appellants and herself, contends that the Department of Public Defender passed over them, as well as other applicants, to reach a candidate who was allegedly pre-selected by the Department for the classification of Legal Procedures Clerk II. The Department utilized the no-call list, wherein a Department may choose to forego interviewing from a certified list, and select a candidate based on the Department's knowledge of the candidate's background, test score, experience, familiarity with the position, etc. Ms. Burge explained to the Commission that certified lists such as no call and custom lists are unfair and should be abolished because they do not adhere to Civil Service Rule 4.1.4. Ms. Burge on behalf of the Appellants and herself requested that the Department interview all candidates on the certified list for the classification of Legal Procedures Clerk II in the Department of Public Defender.

DHR, represented by Kelly Bacon, Manager of the Recruitment/Selection Division of the Department, explained that the no call list was adopted by Carlos Arauz, the Director of DHR in 1997, having had previous experience with this process and also noting that other jurisdictions utilize these types of lists. Ms. Bacon explained that a Department is always looking for the "best fit" when hiring an employee for a certain position, and felt that the interview process was the least valuable indicator of a candidate's qualifications, explaining that background, education, experience and references were better indicators.

The panel of Commissioners questioned the fairness of the no call list utilized by various County departments, and were concerned that the merit system might not be protected. Heidi Atwood, Personnel Officer for the Department explained that the 7 candidates certified for the classification in question are all current employees of the Department, and the Department had questioned whether or not they needed to interview all candidates, perhaps utilizing the no call list process.

Larry Cook, Executive Officer, recommended that the Commission, if definite about its decision on the Rule X hearing, proceed with its vote. However, he suggested that if the Commission was not definite, that this matter be continued until the full Commission was available for input, if the continuance would not pose a hardship on the Department.

Ms. Atwood offered, on behalf of her Department, to interview all 7 candidates as a solution to Ms. Burge's appeal. Ms. Burge agreed to this solution, staying the request for a Rule X hearing.

The immediate request for a Rule X hearing was rendered moot, however the Commission was still concerned with the no call process. Mr. Cook recommended that the Department be allowed to proceed with the interviews, and that the issue of no call be addressed by the Commission by continuing it to the next CSC meeting or allowing Ms. Burge, or anyone else, to bring this issue back following the interviews, or at any other time.

Senior Deputy County Counsel, Ralph Shadwell, interjected that any one of the Commissioners could bring this matter up at any future time.

**Motion by Valencia-Cothran to continue this matter (one month); seconded by Austin. Carried.**

7. Barrett Foerster, Esq. on behalf of **Barton Sheela III, Esq.** and **William Rafael, Esq.** appealing the selection process for the classification of Alternate Public Defender V by the Departments of Human Resources and the Alternate Public Defender. (See also No. 10 below)

RECOMMENDATION: Deny Request.

Barrett Foerster, Esq. addressed the Commission on behalf of Appellants, stating that the proposed remedial action (Proposed letters to Departments of Alternate Public Defender (APD) and Department of Human Resources (DHR) are not sufficiently strong enough to prevent the misuse of CSC Rule 3.1.18. This Rule (which has been invoked only 3 times in the last 20 years) permits a County department to suspend an open competitive examination and appoint a qualified individual to a position, if said competitive examination is deemed impractical. Mr. Foerster emphasized that it is extremely important to have very clear guidelines regarding this Rule, stating that there must be clear evidence of impracticality in order to suspend a competitive examination. In this matter, Appellants contend that the denial of an open competitive examination for the classification of Alternate Public Defender V did not fall within the parameters of Rule 3.1.18. On behalf of Applicants, Mr. Foerster requested a Rule X selection process hearing, and a Rule XI investigation (see item No. 10 below).

Larry Cook, Executive Officer for the Civil Service Commission, undertook some of Mr. Foerster's comments. In lieu of an investigation, Mr. Cook suggested that this matter be continued in order to consider language from Mr. Foerster regarding the proposed letters to both Departments.

The Commission questioned what the "emergency" was that resulted in the open examination suspension. Commissioners stated that at this time there is no remedy regarding the selection process since the performance of the Alternate Public Defender V currently in the position is not at issue. However, the Commission felt that this type

of appointment should be brought to light to ensure that a suspension of a competitive examination is utilized only in an emergency situation.

Carlos Arauz, Director DHR, addressed the Commission, answering questions posed to him regarding his action in 1998 to allow the Department of APD to fill a position without a competitive examination. Mr. Arauz felt the Department's request was valid since the employee had been successfully filling the position previously for 18 months and was very qualified. He questioned why this matter had not been addressed previously since the appointment was approved in 1998.

The Commission reiterated concern for the Civil Service merit system, requesting that DHR not support these types of appointments except in true emergency circumstances.

**Motion by Austin to accept staff recommendation; seconded by Valencia-Cothran. Carried.**

**Continued: The proposed letters to the Departments of APD and DHR will be amended, with input from both Mr. Foerster and Mr. Arauz, and presented to the Commission for its approval.**

## **DISCRIMINATION**

### **Complaints**

8. **Farnaz Sharifrazi**, former employee of the Assessor/Recorder/County Clerk's Office, alleging race, national origin and gender discrimination by the Assessor/Recorder/County Clerk. (See also No. 9 below)

RECOMMENDATION: Continue to the next Civil Service Commission meeting.

Ms. Sharifrazi addressed the Commission, agreeing to continue this matter.

**Continued.**

## **INVESTIGATIONS**

### **Complaints**

9. **Farnaz Sharifrazi**, former employee of the Assessor/Recorder/County Clerk's Office, requesting an investigation into the conduct and operations of the Office of the Assessor/Recorder/County Clerk regarding alleged inappropriate behavior of Office personnel. (See also No. 8 above)

RECOMMENDATION: Continue to the next Civil Service Commission meeting.

Ms. Sharifrazi addressed the Commission, agreeing to continue this matter.

**Continued.**

10. Barrett Foerster, Esq. on behalf of **Barton Sheela III, Esq.** and **William Rafael, Esq.** requesting an investigation regarding the selection process for the classification of Alternate Public Defender V by the Departments of Human Resources and the Alternate Public Defender. (See also No. 7 above)

RECOMMENDATION: Deny Request.

**See No. 7 above.**

**Motion by Austin to accept staff recommendation; seconded by Valencia-Cothran. Carried.**

**Continued: The proposed letters to the Departments of Public Defender and DHR will be amended, with input from both Mr. Foerster and Mr. Arauz, and presented to the Commission for its approval.**

#### **OTHER MATTERS**

##### **Extension of Temporary Appointments**

11. County Library

1 Principal Librarian (Kathleen Honeysett)

RECOMMENDATION: Ratify item No. 11.

**Item No. 11 Ratified.**

12. Public Input.

ADJOURNMENT: 4:20 p.m.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE APRIL 19, 2000.**